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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Comments received from the Permanent Mission of Sri Lanka on the draft report of the Office of the United Nations High Commissioner for Human Rights on promoting reconciliation and accountability in Sri Lanka (A/HRC/25/23)*

* Circulated as received, in the language of submission only.

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[English only]

I. General observations

1. This may be read without prejudice to the Government of Sri Lanka's (GOSL) position of rejection of resolution 22/1. The GoSL wishes to observe that the mandate of Resolution 22/1 is placed within the broad parameters of requesting the GoSL to implement the recommendations of the LLRC. The High Commissioner's draft Report to HRC 25 (A/HRC/25/23) however goes beyond the mandate granted by resolution 22/1 in making reference to and recommendations on numerous issues extraneous to the resolution under reference, as well as in its request to establish an international inquiry mechanism to further investigate alleged violations. Additionally, the recommendations are arbitrary, intrusive and of a political nature, and are not placed within the ambit of the LLRC as mandated by 22/1. The GoSL wishes to respectfully submit that the above is in contravention of the rules of procedure governing the conduct of the Council as stipulated in GA resolution 60/251 and HRC resolutions 5/1 and 5/2.

2. The GoSL wishes to request the OHCHR to delete references to the discredited UNSG's Panel of Experts (POE) Report on Sri Lanka contained in the paragraphs 6, 47, 65, 71, and in footnotes 30 and 44, as well as the full link to the POE Report given in the two footnotes under reference, for the following reasons:

(a) The POE was not referred to in the Resolution 22/1 on Promoting Reconciliation and Accountability in Sri Lanka and therefore alluding to it in the Report A/HRC/25/23 clearly takes it beyond the scope and mandate of Resolution 22/1;

(b) The POE Report on Sri Lanka which was commissioned by the UN Secretary General was the culmination of a private consultation that the latter sought for his own advice, and is not the product or request of the UN Human Rights Council, the UN General Assembly or any other UN body. As it has not received the endorsement of the intergovernmental process, it has neither credence nor legitimacy within intergovernmental for a;

(c) The POE's mandate did not extend to fact finding or investigation. In its Report, the three-member Panel also makes it clear that the assertions set out therein remain unsubstantiated and require a higher standard of proof;

(d) For the above reasons, the GoSL does not extend any credence or legitimacy to the POE Report and protests reference to it in the Council, and particularly in this instance where it is clearly not mandated by the Council;

(e) It may be further noted that the POE though invited by the LLRC to make representation to the Commission, chose not to present themselves before the Commission for reasons best known to them.

II. Engagement by OHCHR and Special Procedures of the Human Rights Council

3. Sri Lanka has consistently interacted with the United Nations system and the wider international community in a spirit of goodwill and cooperation. It is in this context that Sri Lanka remains committed to a positive engagement with the OHCHR and Special Procedures Mandate Holders of the Human Rights Council.

4. In pursuance of this objective, Sri Lanka facilitated an advance mission by officials of the OHCHR to Sri Lanka in 2012 which was followed by the visit of the High Commissioner for Human Rights which took place from 25-31 August 2013, pursuant to an invitation extended by GOSL in early 2011. By the High Commissioner's own admission it was her "longest visit", and while in Sri Lanka she was able to "go anywhere and see anything" that she "wished to see" including the former conflict-affected Northern and Eastern provinces; she had the opportunity to call on the President and have candid discussions with senior Cabinet Ministers, Government officials and opposition MPs. She also noted that she was able to meet independently with a wide range of civil society representatives and attend events organised by civil society activists and organizations. Hence, there was legitimate expectation that the High Commissioner would adopt an objective and unbiased approach to the country. It is unfortunate that this has not been the case.

5. The GoSL has continued its engagement with Special Procedures, and its Permanent Representative in Geneva has engaged in a regular dialogue with them including the SR on Truth, Justice, Reparation and Guarantees of Non-recurrence Mr. Pablo de Greiff and the SR on Extrajudicial, Summary, or Arbitrary Executions Mr. Christof Heyns. The GoSL has also conducted regular meetings with the Working Group on Enforced or Involuntary Disappearances (WGEID), including with senior representation from Sri Lanka's Attorney General's Department. Since January 2012, the GoSL has transmitted responses on 842 cases to the Working Group. Additionally, an Inter-Agency Task Force has been established to respond to the Working Group. Further, at the meeting with the WGEID it has been informed that the latter's request to visit is under consideration as with other similar requests, which will be processed as mutually convenient and taking into account national imperatives.

6. The GoSL has already informed the Human Rights Council, it will continue to schedule pending visits of Special Procedures mandate holders to Sri Lanka following the visit of the High Commissioner. In line with this commitment, the GoSL has extended three invitations to Special Procedures since August 2013 and the SR on Human Rights of IDPs, Dr Chalokya Beyani visited Sri Lanka in December 2013.

7. As previously committed at the UPR, the GoSL agreed to implement recommendations of the LLRC in line with the NPoA, and also make available financial and other resources for same. Additionally, Sri Lanka made 19 voluntary commitments in relation to the UPR. The GoSL is of the view that the UPR second cycle on Sri Lanka is an appropriate context to explore avenues for technical cooperation. High Commissioner's letters to GoSL containing, inter alia, offers of technical assistance in specific areas were received on 31 October 2013. In this context, it is observed that in keeping with HRC Resolution 5/1, offers of technical assistance need to be made in consultation with and with the concurrence of the receiving State. The GoSL remains open to consideration of technical cooperation from the OHCHR in some key areas of reconciliation, in line with the needs of the country, in the context of implementing the accepted recommendations of its UPR 2nd cycle. Sri Lanka has also undertaken commitments on technical cooperation under the UN Development Assistance Framework 2013-2017.

8. Under Section II of the High Commissioner's Report, she has additionally raised concerns regarding a range of issues based on information of questionable veracity and arrived at conclusions in a selective and arbitrary manner.

9. Unlike some other countries, Sri Lanka does not have compulsory military service or conscription. Even at the height of the armed conflict, the GoSL did not resort to any conscription into the armed forces. Sri Lanka adheres to an "All Volunteer" concept and thus enlistment to the armed forces is entirely at the free will of citizens. Under the Sri Lanka law, the supreme legislative organ, the Parliament, is entrusted with the power to

raise and maintain armed forces. Sri Lanka's military is a disciplined entity tasked to protect the country's territorial integrity, maritime boundary, national strategic interest and overall safety and security of the nation and its citizens. Therefore, considering the national security requirements and threat perception, the size of the armed forces is evaluated from time to time. Strength and size of the armed forces and their deployment is a matter exclusively vested with an independent sovereign state. It is not the mandate of the High Commissioner for Human Rights of the UN to call for the demobilization and disarmament of the military of a sovereign State and set timelines for same and the GoSL wishes to emphasize that it does not intend to disarm or demobilize its military. The GoSL continues to evaluate and rationalize military presence according to national security imperatives. The timelines for such activities correlates directly to the threat perceptions of the GoSL to national security and is one which evolves as situations unfold.

10. Following the termination of military operations against the LTTE in 2009, the GoSL has undertaken a gradual process of reduction of military presence in former conflict affected areas. It may be noted that the total strength of the military in the Northern Province has been reduced by approximately 30% from 2009 to October 2013, a process which is continuing to take place. In addition, in the Eastern Province approximately 26% reduction of troop presence has been undertaken. Also 50% of the troops have been deployed in areas which were not affected by the conflict.

11. The following concrete steps taken by the GoSL can be highlighted in this regard:

(a) The former High Security Zones (HSZs) have ceased to exist. The Palaly Cantonment is now the only area in which some security restrictions remain, but even within the Cantonment, civilians have unrestricted access to the airport at Palaly and the Kankesanthurai harbour. Action is also being taken to release lands within the Cantonment area for agricultural and religious activities;

(b) While it is true that there are still some civilian properties included in the Cantonment, it must be stressed that civilians have not occupied these properties for the last twenty to twenty-five years. The Government has taken measures to pay compensation to the owners of these properties and to provide alternate land to them. It should also be noted that lands that had been forcefully taken from the people and occupied by the LTTE for many years have also been released to their legal owners. The former HSZ in the Eastern Province located in the Sampur area from 2007 has been reduced in extent by 65% and declared a Licensed Zone under the Board of Investment;

(c) As at January 2014 the GoSL has released 19,322 acres of private land and 2,518 acres of State owned land in the Northern Province which were hitherto occupied by the military. In the East, the GoSL has released 689 acres of private land and 3,222 acres of State land. Therefore the total figure of lands released in the North and the East amounts to 20,011 acres of private land and 5,740 acres of State land;

(d) The full responsibility for Law and Order has been handed over to the Police. A new Ministry of Law and Order has also been created. 16 new Police Stations and 3 new posts have been established and recruitment of more Tamil speaking Police personnel (1,447) has taken place. Tamil language training is also being provided to additional numbers of Police personnel. 3,424 Police officials have been given Tamil language training in the period 2009 – 2012 and 409 Police officials have been given English language training during this same period. This is in line with the GoSL's overall policy of promoting trilingual competency among public officers;

(e) All schools in the Northern Province used by the Sri Lanka military have been handed over to civilian use. The schools occupied by the LTTE were renovated by the Government and handed over to the respective zonal directors of education which was only possible because the war ended;

(f) The military has no involvement in civilian administration. The civil administration system in the North and East is fully functional and discharging their duties. The culmination of this process was the successful conclusion of Provincial Council elections in the North in 2013 and the establishment of the Northern Provincial Council;

(g) The activities carried out by the Sri Lankan military are within the ambit of Civil Military Cooperation and are not intended to usurp the powers of civil administration. These activities are similar to post-conflict activities undertaken by military forces across the globe and involve reconstruction/renovation of houses, provision of adequate safe drinking water, construction of sanitary facilities, reconstruction of religious places for communities, improving access roads, irrigation projects etc. Whilst these were undertaken more intensively in the immediate post-conflict period, these activities have also become limited due to the strengthening of civilian institutions and their capacity to undertake such work.

12. As outlined above, the aforementioned meaningful steps have been taken by the GoSL which are a part of the process of reduction of the military presence in former conflict affected areas. Therefore, the assertion by the High Commissioner regarding demilitarization is erroneous and misleading. It seeks to create the impression that the presence of the military in these areas remains the same as during the conflict.

13. Given that for over 30 years the sovereignty and territorial integrity of the country was threatened by a terrorist group, the GoSL has legitimate concerns regarding resurgence of terrorist activity in the areas in which they were fully functional and therefore national security interests play a crucial role in decisions regarding the level of military presence in those areas in order to prevent any recurrence in the future.

14. In addition, there have also been repeated attempts, including by the High Commissioner, to draw a non-existent correlation between the presence of the military and vulnerability of women to sexual harassment and violence in the North. This position is not borne out by the available statistics. The GoSL in its statement to the 24th Council highlighted that a survey conducted covering the period 2007-2012 had revealed that of the reported incidents of sexual violence in the North a large majority were carried out by close relatives/ neighbors and only a very few could be attributed to the Security Forces. In all these cases involving Security Forces personnel disciplinary and legal action has been taken. The military has taken strict action to either discharge or award other punishments to these personnel. Furthermore, cases have been filed in civil courts, some of which are pending in Courts and with the AG's department.

15. Furthermore, the GoSL wishes to reiterate that there exists no basis for concerns as expressed by the High Commissioner with regard to presence of the security forces contributing to the vulnerability of women to sexual violence in the North. The GoSL deplores all acts of violence against women and girls and has taken concrete action against reported cases and will continue to do so. The GoSL requests the High Commissioner to provide factual evidence to substantiate this allegation and to refrain from making general comments without a degree of specificity which would allow the GoSL to investigate and respond in a comprehensive manner.

16. Sri Lanka had initiated action to prepare legislation with regard to Witness and Victim Protection. Consequent to extensive consultation in this regard, including examination by the Cabinet Sub Committee on Legislation and action being taken thereon by the Legal Draftsman, the finalization of legislation is in progress. The need for legislation for the criminalization of disappearances is being examined by a Committee appointed by the Ministry of Justice, in consultation with the Attorney General. Further, amending legislation to enhance existing provisions in the Penal Code and the ICCPR Act with regard to hate speech has been prepared.

17. Bilateral discussions are ongoing with regard to a truth seeking mechanism. With regard to reparation policies, they are entrenched in the existing domestic legislation. They are implemented through administrative and judicial processes.

III. Recent human rights developments

18. With regard to the High Commissioner's Oral Update at the 24th Session of the Council it may be recalled that the GoSL provided its observations on the issues referred to therein.

19. The GoSL rejects the assertion that there is an undermining of the independence of the judiciary. Administration of justice, inclusive of independence of the judiciary is constitutionally enjoined and any infringement of these entrenched rights is visited with sanctions. Judges hold office during good behavior and proven misbehavior or incapacity triggers constitutionally entrenched disciplinary proceedings. Any procedure adopted in this regard has been in accordance with the Constitution and such compliance with constitutional provisions cannot be regarded as undermining the independence of the judiciary.

20. It is mandatory for all INGOs and NGOs working in Sri Lanka to register with the NGO Secretariat which is under the Ministry of Defence & Urban Development. They are also required to submit comprehensive details on their proposed activities in the country. The incidents under reference in paragraph 15 are therefore not a reflection of militarization or involvement of the military in civilian functions. Drawing such a correlation is erroneous.

21. The statement attributed to the Secretary to the President about steps being taken to replace senior officials in the Northern Province with civilians is incorrect and it gives a misleading impression that military personnel are engaged in civil administration. All civil administration positions in the Northern Province are in fact occupied by civilians.

22. In addition to the substantial reduction of the military presence in the North and the East, the numbers of security barricades, road blocks and checkpoints have been reduced by 99 percent in these areas.

A. Former combatants and detainees

23. With regard to the numbers concerning rehabilitees and detainees referred to as having been provided by the GOSL to the High Commissioner during her visit, it may be noted that the GoSL has consistently provided updates to the HRC at the regular sessions on this matter.

24. The GoSL rejects the assertion that access to legal representatives of the detainees remains a matter of concern. Access is given not only to their legal representatives but also to family members, religious dignitaries, medical personnel and the ICRC. The Magistrates also visit the detainees regularly to ascertain their well-being. The presidential directives of 07th July, 2006 and reissued in 2007 remain valid to date. These directives protect the rights of the arrested person. Every member of the armed forces and the police force shall assist and facilitate the National Human Rights Commission of Sri Lanka (NHRCSL) and any person authorized by the NHRCSL in the exercise of its powers, duties and functions and also ensure that the fundamental rights of persons arrested or detained are respected.

25. In addition, legal aid is provided by the State at its expense for accused and appellants in the High Court and the Court of Appeal respectively, if they are unable to retain a lawyer of their choice. The Bar Association of Sri Lanka also assists persons with

legal aid mainly in forwarding Fundamental Rights petitions to the Supreme Court. Legal aid is also available for civil matters.

26. All detainees can challenge the lawfulness of the detention by way of Habeas Corpus in the High Court or Court of Appeal and also challenge such detention in the Supreme Court by way of a Fundamental Rights Application. As regards the fundamental rights applications it is noteworthy that complaints could be initiated by addressing a letter to the Supreme Court –the epistolary jurisdiction which has been developed by the Supreme Court.

27. Despite the tremendous advances being made in Sri Lanka, it needs to be understood that the international network of the LTTE still remains active. Before and during the war, this network enabled the LTTE to establish links through which it sustained terrorist activities in the country. This included, inter alia, the procurement of arms and financing of terrorist activities. In addition, they linked with media, international agencies and non-governmental organisations for propaganda purposes and financed electoral campaigns internationally. By inciting Tamil populations living abroad and courting influential opinion makers, the LTTE network creates a distorted picture about developments in Sri Lanka that is unfortunately believed by certain foreign politicians and officials, and disseminated within the international community. The ground reality that prevails in Sri Lanka continues to be distorted by this misinformation to the international community. Though the LTTE has been defeated, its global network continues to garner support for terrorist activities through its transnational organizations thus seeking to destabilise peace and derail the reconciliation process that is taking place in Sri Lanka. In the circumstances Sri Lanka needs to retain its anti-terrorism law and the call for its repeal is tantamount to a request to Sri Lanka to renege on its international obligations to effectively respond to domestic and international terrorism. Therefore it is unjustified to demand the repeal of the Prevention of the Terrorism Act (PTA). It is to be noted that the UK and the USA have more stringent legislative responses to terrorism.

28. The GoSL continues to review the cases of suspects held under the Prevention of Terrorism Act in order to prosecute, submit to rehabilitation or release persons held in detention, upon consideration of the evidence.

29. While the High Commissioner asserts that there has yet to be any prosecutions or trials for the war crime of child recruitment, including against former LTTE cadres and former paramilitary leaders now serving in Government, it may be noted that Sri Lanka was delisted from Annex II of the UN Security Council resolution 1612 on Children in Armed Conflict in 2012 reflecting closure on the issue. It may be further noted that Sri Lanka was one of the first countries to ratify the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict in 2000. Consequently, Sri Lanka made recruitment of children for use in armed conflict a punishable offence under the Penal Code with Amendment Act. No. 16/2006 of February 2006. All 594 LTTE child combatants who were treated as victims were reunited with their families within a period of one year subsequent to rehabilitation.

B. Attacks on religious minorities, human rights defenders and freedom of opinion and expression

30. It is erroneous to note that there has been a 'significant surge in attacks against religious minorities and incitement of violence by Sinhala Buddhist nationalist groups.' There have been sporadic incidents focusing on places of worship of all four religions. These include 105 attacks on Hindu religious places, of which 95 cases were robberies committed by the locals. With regard to the reported attacks, 16 relate to Buddhist, 41 to Christian/Catholic and 20 to Muslim places of worship during the period from June 2009 to December 2013. Out of the 182 attacks, judicial inquiries are in progress regarding 112, and

22 cases have been concluded. It may be noted that out of the 182 incidents only 147 cases were reported to the police. In all such instances police has taken steps to report facts to Magistrates and action has been taken to produce suspects before Magistrates where credible information has been available.

31. All people living in Sri Lanka enjoy freedom of religion, which is a constitutionally guaranteed right. The Government of Sri Lanka remains committed to ensuring that this right is protected. This is evidenced by the action taken to address reported incidents of disturbances in the recent past. Action has been taken on those who have contravened the law of the land, once sufficient evidence has been gathered for prosecution.

32. More broadly, In keeping with Sri Lanka's societal, cultural and historical norms, regular dialogue continues to take place at various levels to ensure interfaith harmony and understanding amongst its diverse populace.

33. Whenever credible information relating to incidents has been made available the GoSL has taken appropriate action.

34. The general practice of the OHCHR has been to make claims on the basis that credible information is available. However, these claims have not been substantiated. For instance, in the High Commissioner's Oral Update to the Council at the 24th Session she referred to 50 new incidents of arbitrary arrests (reported between 2009 and 2013). Whilst the GoSL in its response requested the High Commissioner to share that information, to date no such details have been provided by her Office which would enable the Government to respond.

35. The basic premise of engagement with a State by the OHCHR should be to provide that country with an opportunity to respond to allegations before statistics are placed before the Council. This is practiced in the breach by the OHCHR to seek to legitimize pre-judged and misplaced agendas thereby misleading the international community. We reject attempts to portray Sri Lanka as intolerant of religious minorities. Whilst sporadic incidents have occurred, as is the case with any multi-cultural, multi-ethnic, multi-religious society, they do not characterize the peaceful existence of the different religious communities of Sri Lanka.

36. With regard to the allegation of police blocking buses carrying members of families of the disappeared as they were travelling to Colombo to participate in a human rights event on 13 November 2013, it may be noted that having perused all records, the GoSL wishes to state that no such incident has been reported to the Police. The GoSL therefore requests that this section be duly corrected.

37. Any attacks against journalists and media outlets that were reported to the Police have been duly investigated and facts have been reported to the relevant Magistrate's Court.

38. Successful prosecution of individual perpetrators requires proof beyond reasonable doubt of all elements of the offence inclusive of the identity of the offender and in a common law system of prosecution that prevails in Sri Lanka unless such evidence satisfies the degree of proof rebutting the presumption of innocence, a prosecution cannot be launched. The GoSL has reiterated that it has not, nor will hesitate to prosecute perpetrators whenever credible evidence is available and that domestic mechanisms inclusive of its criminal laws are adequately equipped to achieve this end.

39. It may also be noted that there is opportunity for media personnel to lodge a complaint immediately through an online complaints system launched by the Sri Lanka Press Council.

40. The GoSL rejects the assertion that there is 'a continuing trend of attacks on freedom of expression, peaceful assembly and association, particularly against human

rights defenders, journalists and families of victims'. The Government of Sri Lanka is fully committed to the protection of human rights defenders. While GoSL has repeatedly requested for specific information with regard to these allegations made regarding the period of the visit of the High Commissioner for Human Rights to Sri Lanka in August 2013, we note that almost 6 months later, a Joint Urgent Appeal from the OHCHR in this regard containing unsubstantiated, uncorroborated allegations of intimidation has been received by the Sri Lanka Permanent Mission in Geneva only on 10th February 2014, less than 24 hours before the deadline set by the OHCHR for GOSL to submit comments on the High Commissioner's draft report. While this communication is receiving the high attention of the GoSL, which would be responding to it in a timely manner, the GoSL takes note of the timing of the communication transmitted just three weeks ahead of the upcoming March Session of the Council where Sri Lanka is due to be considered.

41. The wide range of interactions that the High Commissioner for Human Rights and other foreign dignitaries have had with civil society during their visits to Sri Lanka in 2013 and 2014, as well as the active engagement of civil society from Sri Lanka in successive sessions of the Council are testimony to the vibrant nature of Sri Lanka's civil society and the freedoms they enjoy.

42. There have also been repeated allegations on curtailment of media freedom and freedom of expression in the country. Whilst it is true that there remain certain unresolved cases of violence against media personnel, there is no restriction placed on what may be reported by the press. The law of evidence plays the most crucial role, and due process is required for prosecution. This should not be interpreted as unwillingness on the part of the Government to bring perpetrators to justice.

43. Further, in recent years, the spread of social media networks and online news outlets has contributed to the diversity and the increased speed of propagation of information throughout the country at large. The wide spectrum of views on display in Sri Lanka is amply demonstrated by its print and electronic media, much of which is fiercely critical of the Government. Despite some of the views expressed being on occasion vituperative and targeted at individuals, it is nevertheless recognized that this is the price to be met for upholding the democratic norms of a free and vibrant media. It should also be noted that during the period of the present Government, no press censorship has been imposed. Further the law relating to criminal defamation has been repealed by Parliament.

44. Sri Lanka remains committed to taking necessary steps to ensure the safety of media personnel and institutions. Although no special laws have been formulated with regard to media personnel or institutions, any person who seeks to vindicate their rights has the option of filing a Fundamental Rights application in the Supreme Court, or a Writ Application in the Court of Appeal, or making a complaint before the Human Rights Commission of Sri Lanka on their own behalf or in the public interest. The full gamut of constitutional guarantees, including effective remedies, is available to individuals or groups who wish to canvass for the rights of media personnel.

45. Further, in order to ensure media freedom, the Government of Sri Lanka is seeking to strengthen grievance mechanisms which include complaints to Police, processing Fundamental Rights applications filed in the Supreme Court and complaints to the Press Council. The Government is also pursuing investigations into current cases of alleged attacks on media personnel and institutions.

C. Extrajudicial, summary and arbitrary killings

46. For reasons more fully stated below, the incidents referred to under this heading cannot be categorized as falling under alleged extrajudicial, summary and arbitrary killings.

47. The facts as represented in the High Commissioner's report on the Weliweriya incident are erroneous and misleading. The following maybe highlighted in this regard:

- It appears from the comments contained that the Police and Army disrupted a peaceful protest which is not the case. The public protest campaign in the Weliveriya area alleging the contamination of water by a private factory located there turned violent and police were compelled to seek the assistance of the Army to maintain law and order. A crowd of around 4,000 protestors that had surrounded the factory had attacked police officials and blocked junctions connecting the main Colombo-Kandy road thereby obstructing traffic. Some rioters attempted to grab the weapons of the soldiers and a nearby petrol station was attacked using petrol bombs.

- The number of fatalities is factually incorrect. There were 3 civilian deaths due to the clash and several civilians also sustained injuries. In addition 1 policeman and 8 army officials also sustained injuries.

- Consequent to the Weliweriya incident a 5 member Court of Inquiry (CoI) was appointed by the Army Commander on 02/08/2013 and the said CoI submitted its report to the Commander on 21/08/2013. The report has been referred to the Director Legal/Chief Prosecutor of the Army for further action. Once the findings and recommendations of the CoI have been examined, the procedure leading to Court Martial, known as the recording of Summary of Evidence, will be ordered against persons where a prima facie case has been made out.

- In order to facilitate this process the Brigade Commander who was in charge of the Weliweriya area and 3 Sector Commanders have been relieved from their duties.

- From the evidence led before the CoI it has been revealed that the Army was deployed in the Weliweriya area at the request of the Police and this was justifiable considering the security situation in the area. Further, in terms of the Code of Criminal Procedure Act the Army is empowered to take appropriate action in a riot situation.

- The Police investigations on the 3 deaths that occurred during the incident are being conducted by the Colombo Crime Division of the Police. The Magistrate Court of Gampaha has concluded the magisterial inquiry into these deaths and the dossier of the inquiry has been forwarded to the Attorney General for consideration.

48. With regard to Welikada prison incident, the sequence of events that occurred is detailed below:

- Upon a formal request by the Commissioner General of Prisons, a team of unarmed police officers from the Special Task Force undertook a search operation in the Welikada prison on 09 November 2012 to look into reported possession of narcotics and offensive weapons by the inmates. The Police team was able to discover a substantial quantity of narcotics during the initial search. When the search was extended to the wards of the hardcore prisoners, they attacked the Police, who had to retreat using tear gas. Thereupon, the inmates broke open the prison armory and armed themselves with automatic assault rifles and started shooting indiscriminately. The prison which was built during the British colonial period is located adjacent to a busy highway and consequently, several motorists and passersby were hit by bullets. During this riot some of the hardcore convicts escaped from custody.

- The police being unable to contain and control this situation called for assistance from the Sri Lanka Army. When the Army arrived on the scene they observed that the shooting was still continuing and that several police officers, including the STF Commandant had sustained serious gunshot injuries. Assessing the situation and realizing the need to protect and rescue lives of the unarmed police officers, prison

officials, other inmates and civilians passing by, the Army was compelled to use force in order to bring the situation under control. In the circumstances, the GoSL rejects the categorization of this incident as an extrajudicial, summary or arbitrary killing.

49. With respect to the Vavuniya prison incident, investigations conducted up to now do not disclose sufficient material to attach criminal responsibility to any particular person. Consequent to an order made by the High Court judge of Vavuniya in case no. HCB 2275/2011, to transfer a prisoner to a detention camp in the South, the other prison inmates began a protest campaign and took hostage 3 prison officers and continued this protest for more than a day. Unable to control this siege the prison authorities summoned the assistance of the STF of the Police in order to rescue the prison officials held as hostages. In the course of this operation 2 prisoners, 3 officers of the prison and 7 STF personnel were injured as a result of the attack launched by the prisoners. The 2 prisoners who sustained injuries during the rescue operations later succumbed to their injuries. As the facts demonstrate this incident is in no way characteristic of extrajudicial, summary or arbitrary killing.

D. Mass Graves

50. The remains found in the graves in Matale and Mannar have been taken into judicial custody and are being sent for examination and carbon dating under judicial orders. Thus the integrity of evidence available for any potential prosecution has been preserved.

51. With regard to the recovery of skeletal remains in Matale, police investigations have revealed that there had been a cholera epidemic in 1940s and those who died had been buried in a remote corner of the Matale hospital premises itself. All these aspects are being investigated by the police.

52. The Magistrate of Matale was transferred consequent to complaints made by the entirety of the Bar in Matale on irregular practices committed by the said Magistrate in association with local police. This disciplinary measure of transfer has been taken by the Judicial Service Commission in accordance with the provisions of the Constitution and the transfer has nothing whatsoever to do with the handling of the mass graves' case.

53. With regard to the recovery of skeletal remains in Mannar, it has been revealed that the area had been occupied by the LTTE for 30 years, except during the period 1988/89 when it was occupied by the Indian Peace Keeping Force (IPKF), till the area was liberated in 2008, it was not under the control of the GoSL. The matter is presently being investigated by the Police under the supervision of the Magistrate of Mannar.

IV. Implementation of the recommendations of the Lessons Learnt and Reconciliation Commission (LLRC)

54. Please find given below GoSL observations with regard to Paragraphs 29 to 32 of Section IV of the Report. GoSL requests that these paragraphs be corrected as per the observations provided below:

i. The statement that GoSL has been selective in implementing only some of the recommendations of the LLRC is erroneous. It is also factually incorrect to say that only 30 of the 145 recommendations 'are only partially reflected in the NPoA', and that 'a remaining 140 recommendations have been left unaddressed in the NPoA altogether';

ii It may be noted that Chapter 9 of the LLRC Report titled 'Summary of the Principal Observations and Recommendations' contains 285 paragraphs which is the sum total of observations and recommendations. Several of such recommendations are widely

similar, have common objectives and outcomes, and are repetitive. The GOSL has identified 144 as recommendations which have been clustered in the LLRC National Plan of Action (NPoA) under five themes:

(i) International Humanitarian Law Issues (07 recommendations);

(ii) Human Rights (54 recommendations);

(iii) Land Return & Resettlement (24 recommendations);

(iv) Restitution/Compensatory Relief (09 recommendations);

(v) Reconciliation (50 recommendations).

iii. These recommendations have been comprehensively incorporated into the LLRC NPoA and are now under implementation. Further, all agencies assigned with the implementation of the NPoA are instructed to consider the recommendations in their entirety and implement them in the spirit in which they had been made in the LLRC report;

iv. The recommendations itemized under Footnote 14 as being only partially reflected in the NPoA is erroneous. Recommendations 9.81, 9.98, 9.103, 9.117 and 9.134 referred to are adequately reflected in the NPoA and are under implementation. Further, with regard to recommendation 9.98, Article 12 of the 1978 Constitution stipulates the Right to Equality and Article 12(4) states that no law can be made to prevent the advancement of women, children or disabled persons. Protection of The Rights of Persons with Disabilities Act (No. 28 of 1996) amended by Act No. 33 of 2003 stipulates the legal provisions on protection to disabled persons. It may be noted that Sri Lanka is a signatory to the Convention on the Rights of Persons with Disabilities as of 30 March 2007. With regard to implementation of recommendation 9.103, GoSL continues to work closely with UN agencies, INGOs, NGOs and civil society on infrastructure development and reconstruction, including re/construction of housing. With regard to Recommendation 9.117 GoSL has removed all restrictions at all places of religious worship in Sri Lanka. Further, the implementation of the Recommendations 9.134 and 9.140 are completed, while Recommendation 9.128 is under implementation. Recommendation 9.236 has been referred to the Parliamentary Select Committee for further action. The GoSL requests that the above footnote and related reference (Paragraph 30) be corrected to reflect the above;

v. Paragraph 31 – Of the items referred to at Footnote 15, 9.56, 9.166, 9.121 and 9.170 are observations. However, the gist of all observations made in Chapter 9 of the LLRC Report is incorporated into the 144 recommendations contained in the NPoA. Hence it is erroneous to affirm that 'the remaining 140 out of the LLRC's 285 recommendations have been left unaddressed in the NPoA altogether'. GoSL requests that this misperception be corrected.

vi. Paragraph 31 - It is erroneous to indicate that the NPoA does not include the safeguards recommended by the LLRC to ensure the security and safety of any person taken into custody. For example, Recommendation 9.47 itemized at Footnote 16 which refers to the responsibility of the State to ensure the security and safety of any person taken into custody through surrender or arrest is fully covered by Recommendations 9.53, 9.67, 9.54, 9.55, 9.57, and Interim Recommendation IR (1b) in the NPoA Report (Serial Nos. 12, 13, 14, 15 and 22). Further, in regard to recommendation 9.64 which refers to the full implementation of all Interim Recommendations (IR) of LLRC pertaining to detainees, it may be noted that the latter recommendations are reflected under IR (1a) and IR (1b) in the NPoA (Serial Nos. 17 and 22). It may be further noted that IR (1a) and IR(1b) (i) and (ii) are completed and IR (1b) (iii) is in progress. Similarly, 9.62 itemized at Footnote 16 which pertains to detainees is adequately covered by LLRC IR 1(a) which is included in the NPoA Report at Serial No. 17. While 9.66 in Footnote 16 contains both an observation and a recommendation, the implementation of the recommendation with regard to cooperation

and constructive engagement with the ICRC has been in progress even before the NPoA and still continues, e.g., cooperation on detention issues and prisons visits etc. GoSL requests that this paragraph be corrected;

vii. Paragraph 32 - With regard to recommendation 9.46 on taking immediate steps to ensure that allegations of abductions, enforced disappearances and arbitrary detention, are investigated, the NPoA comprehensively provides the progress of the implementation of this recommendation.

55. The implementation of the NPoA is a dynamic process which evolves over time to culminate in the accomplishment of the recommendations. This process is envisaged to incorporate additional measures and modifications of the activities as and when required to fulfill the respective recommendations.

56. Significant and tangible progress has been made by the GoSL in the reconciliation process, including implementing the recommendations of the LLRC through the NPOA, with particular reference to addressing issues of accountability, including, inter alia, issues related to disappearances, detention, casualty figures, rehabilitation, resolution of land issues, demilitarization, restoration of civil administration, reduction of military presence in the Northern province, demining, resettlement of IDPs, infrastructure and socio-economic development of the Northern and Eastern provinces, restitution and compensatory relief, implementation of Trilingual policy, promotion of ethnic and cultural harmony through school curricula, livelihood development, integration of youth in reconciliation, recruitment of Tamil speaking officers to the public service, institutional strengthening and democratization including election of the Northern Provincial Council, establishment of a separate Ministry for Law and Order, strengthening of the Official Languages Commission, fully functional Courts in the Northern Province with the exclusive use of the Tamil language, etc., which have been disregarded by the High Commissioner in her Report.

57. The High Commissioner's call to establish an international inquiry mechanism to further investigate the alleged violations of IHRL and IHL and monitor any domestic accountability process gives scant or no regard to the domestic processes ongoing in Sri Lanka within the framework of the LLRC NPOA, and is politicized in premise. The GoSL therefore, categorically rejects this call.

58. At Sri Lanka's UPR in November 2012, the GoSL stated that '...some of the recommendations fall under the ambit and scope of the NHRAP' (National Plan of Action for the Protection and Promotion of Human Rights). GoSL would appreciate if this statement is accurately reflected in Paragraph 31.

59. Investigations of this nature are complex and time consuming. The GoSL has consistently reaffirmed its commitment to investigate any allegation and whenever credible evidence emerges to make out a prima facie case, the GoSL will engage in prosecuting those found responsible for such crimes.

60. With regard to specific references made in Paragraph 35 of the High Commissioner's report please see the response of the GoSL under 'Former combatants and detainees'.

V. Progress on accountability issues

61. The fact that multiple mechanisms of accountability have been set in motion by the GoSL cannot be discounted by mere assertions of lack of independence and credibility. The multiple mechanisms of accountability demonstrate the comprehensive initiatives taken by the GoSL and they are in no way piecemeal.

62. By virtue of powers vested in the Executive under the Commission of Inquiry Act, a 3 member Commission of Inquiry has been appointed to investigate and report on matters relating to involuntary disappearances that were alleged to have occurred in the Northern and Eastern Provinces between 10 June 1990 and 19 May 2009. The Commission is vested with a wide mandate (Gazette Extraordinary No. 1823/42 dated 15 August 2013).

63. The said Commission is empowered to inquire and report on several matters relating to the alleged incidents. They include evidence on identity of any resident of these 2 provinces who had been abducted or disappeared from their residences, their present whereabouts and identity of persons responsible for such abductions and disappearances. The Commission is further required to report on the possible legal measures that can be initiated against the persons who are found responsible for such abductions and disappearances and measures that could be taken to prevent recurrence of such acts in future. The mandate of the Commission further includes inquiry into the obligation of the government to grant reasonable relief to the immediate family members of persons who have been so abducted or disappeared.

64. The Commission's mandate is to focus on the alleged abductions or disappearances that occurred during the period 1990 to 2009 of persons resident in the Northern and Eastern provinces which was the former theatre of conflict. It was specifically confined to the North and East as the majority of allegations of disappearances emanated from within the said Provinces.

65. This wide ambit and the fact that the Commission has so far received over 13,000 complaints establish that the Commission is an effective accountability mechanism which commands the credibility to hold accountable anyone who has been responsible for violations, if any, of international human rights law and international humanitarian law and thus, Sri Lanka possesses today an efficacious institution which cannot be discounted by any standards.

66. In addition to the above, the GoSL has also taken the following measures to address accountability issues:

- Established Military Courts of Inquiry
- Conducted the Enumeration of Vital Events (2011)
- Set up a database on detainees with access to next of kin
- Streamlined reporting procedure to the UN Working Group on Enforced and Involuntary Disappearances (UNWGEID)
- Regular discussions take place between the GoSL and the ICRC on exploring possible areas of cooperation on alleged disappearances

67. It is well recognized that in matters pertaining to breaches of military discipline, especially with regard to violations of IHL, military courts have the jurisdiction, and the legality of these military courts have been recognized by many international instruments on IHL including Geneva Conventions and the Hague Conventions. Therefore, by virtue of the powers vested in the Commander of the Army by the Army Act and under international law he has appointed a Court of Inquiry to inquire into and investigate the alleged violations of IHL.

68. The country-wide Census on Deaths/Injuries to Persons or Property Damages due to conflicts since 1982 will address, inter alia, the issue of enumerating casualty figures, considering that victims were not confined only to the end stage but were affected during the entire duration. This Census which was carried out by the Ministry of Public Administration and the Department of Census and Statistics was concluded in December 2013. With regard to the census in the former theatre of conflict it was carried out by

Tamil-speaking public officials serving in the North and the East. The Census will help establish casualty figures with a level of credibility which is not to be found in the unsubstantiated, arbitrary figure of 40,000 referred to in the UNSG's POE Report on Sri Lanka which is discredited and rejected by the Government of Sri Lanka.

69. Since many of these persons who have been reported as missing have taken refuge abroad, mainly in countries in the Western hemisphere, including the UK, USA and Canada, the GoSL requested for information of such persons who had sought asylum. This request has been denied by the aforementioned countries citing laws, regulations and policies of those governments and stating that they could not confirm, deny or otherwise comment on whether particular individuals have applied for or been granted asylum. This would also have a bearing on the work of the Commission on Disappearances.

70. References made by the High Commissioner to alleged killings of journalists and attacks on media institutions has been responded to in the section on 'Attacks on religious minorities, human rights defenders and freedom of opinion and expression'.

71. The GoSL does not have the competence to comment on the content of Paragraph 44 as it relates to an initiative by the NHRCSL which is an independent entity.

72. The LLRC is a homegrown mechanism established with the objective of truth seeking and reconciliation. The GoSL is best placed to determine its own processes with regard to truth seeking and reconciliation.

73. With regard to the Trinco Five case, the Non Summary inquiry which is in progress has concluded the evidence of 14 witnesses and affidavits of 7 official witnesses have been tendered before court. 14 other witnesses have been summoned for the next date of inquiry which is 06 March 2014. 7 witnesses are said to be living overseas and steps have been taken to trace their whereabouts. Attempts to serve summons on witnesses via e mail failed. The progress up to now is due to relentless efforts of the GoSL and the investigators. The Attorney General has appointed a senior prosecutor to monitor the investigations and directed the special investigating team to pursue any clue to unearth the identity of the offenders. Even up to date the identity of the offenders has not been established specifically. However, going on the available evidence it has been established that the accused against whom proceedings have now been instituted were around the place when the offence had been committed. Prosecution has been instituted on the basis that those accused being law enforcement officers, should offer a reasonable explanation if an offence was committed when they were around the place and if no such explanation is offered a court of law may reasonably conclude that they were involved in the commission of the crime, especially since they were under a legal duty to prevent the commission any crime. Therefore, it is evident that a judicial process is ongoing and the GoSL remains committed to bring this matter to a conclusion.

74. With regards to the Action Contre la Faim (ACF) case, a team of senior prosecutors comprising 6 Senior State Counsels and a State Counsel reviewed material gathered during the investigation, inquest and Presidential Commission of Inquiry, pertaining to the incident. This team works under the direct supervision of two Additional Solicitors General. Several official witnesses such as the Judicial Medical Officer and the Government Analyst (ballistic expert) were interviewed.

75. On the instructions of the AG, further investigations are being conducted by the Criminal Investigation Department (CID) as recommended by this team of prosecutors, who are especially dedicated to the ACF case. The CID has been instructed to investigate details of calls made using the telephones used by the deceased workers and to interview, inter alia:

- all members of armed units that regained control of this area after the attack by the LTTE which was repulsed following two to three days of fighting,
- family members of the deceased aid workers on contacts they had during the relevant period,
- ACF members who were attached to the Muttur Office as well as the Trincomalee Office from where the deceased workers were sent to Muttur.

76. The progress of further investigation conducted by the CID is reviewed periodically by the team of prosecutors. It must be specifically stated, that in this case too, it has not been possible to establish the identity of the accused. These offences have been committed after the LTTE invaded the village and all inhabitants abandoned the area on receipt of information of the advancing LTTE cadres. The law enforcement officers retreated as they felt that they could not engage the LTTE who by far were numerically larger. A Catholic Priest who testified had stated that he was the last to leave the village and found the ACF workers still remaining. Further, he had requested them to leave but they had refused. The available evidence is to the effect that the forces found the dead bodies when they arrived at the village after several days. Investigations into this incident under prevailing conditions of the conflict in that region became extremely difficult. The GoSL unreservedly condemns the murder of the ACF workers. The Attorney General has stated that a prosecution would be launched if any evidence is made available to establish the identification of the perpetrators of the offence. A request has been made by the GoSL through relevant diplomatic channels for assistance to locate witnesses abroad even on the basis of anonymity to facilitate investigations.

77. The reference to the Channel 4 video footage without qualification in the Report leads to confusion between the original video footage of 1mn 17s in duration (November 2009) referred to by the former SR on Extrajudicial, Summary, or Arbitrary Executions Mr. Philip Alston; the second 'extended video footage' of 5mn 25s in length, (December 2010) referred to by current SR on Extrajudicial, Summary, or Arbitrary Executions Mr Christof Heyns; and the subsequent Channel 4 documentary video 'Sri Lanka: Killing fields' which continues to be periodically recycled and screened, with the tacit support of elements of the diaspora linked to the former LTTE, to coincide with the March sessions of the Human Rights Council when the resolution on Sri Lanka comes under consideration.

78. It should be noted that reference to the footage of the latter Channel 4 documentary has not been the subject of any investigation. Therefore, reference to pronouncement on authenticity or otherwise of the latter documentary of Channel 4 without distinction between the different footage is erroneous and misleading. Furthermore, this footage has not been the subject of investigation of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. The GoSL requests that this misperception be duly corrected in the Report.

79. It may be further noted that while the LLRC wrote to the Independent Television Network (ITN), United Kingdom, requesting a copy of the original broadcast footage of Channel 4 and whatever other information the Network could share with the Commission including the dates, location, dates, location etc., related to the alleged incidents, ITN did not provide a copy of the original broadcast video. In the absence of a copy of the original broadcast footage, the LLRC used for its investigative purposes ''the video as available in the public internet domain''. The Commission in its observations / recommendations on the video, inter alia, expressed its ''regrets'' at ''the fact that the Broadcaster did not respond positively to the request made by the Commission to provide more comprehensive information'', and noted that "greater cooperation by the organization that provided to the television stations these video images and by the Producer/Broadcaster that aired this footage is essential to establish facts of this case.'' (LLRC Report November 2011).

80. Notwithstanding the lack of authenticity of the Channel 4 video acting on the recommendations of the LLRC, a Military Court of Inquiry has been established to inquire into the unsubstantiated allegations contained therein which is in progress. At present, the Court is interviewing various Field Commanders to identify the relevant formations and potential witnesses. This is a tedious task and once the potential witnesses are identified, they will be formally called as witnesses.

81. With regard to the assertions on Balachandran, Thurairajasingham and Isaipiriya, it is categorically stated that the authenticity of the footages/photographs referred to remain unsubstantiated and unverified. In the circumstances, the GoSL objects to the inclusion of a reference to this unverified material in the High Commissioner's Report.

82. Due to the lack of credible evidence there are no further inquiries being conducted pertaining to the "White Flag" incident.

83. The wife of Prageeth Ekneligoda filed a Habeas Corpus application in relation to his alleged disappearance. This case is pending in the Magistrate Court of Homagama. A witness that was called to give evidence by the Counsel representing Mrs. Ekneligoda who claimed to be a friend of Prageeth Ekneligoda stated that he was to meet Prageeth that evening, who had telephoned him stating that he will be getting late. Subsequently, Prageeth spoke with this witness over the telephone and informed that he was with some friends and was on his way to meet the witness. While this conversation was taking place the witness claims that the call got disconnected and subsequent attempts to contact Prageeth over the phone immediately thereafter were unsuccessful. This witness was the last person who had contact with Prageeth Ekneligoda. Another witness called to give evidence by the Counsel for Mrs. Ekneligoda has stated of a sighting of Prageeth in France.

84. Former Attorney General giving evidence at the said inquiry stated that what was told by him before the Committee Against Torture was that there was information that Prageeth Ekneligoda is living in a Western country and that the GoSL was investigating that aspect. When the former Attorney General was questioned in court if he was personally aware of the whereabouts of Prageeth Ekneligoda, he replied in the negative, and he further stated that he made this statement on instructions received that the information was being investigated. The Magisterial inquiry is in progress.

VI& VII. Conclusions & Recommendations

85. In the light of the aforementioned positions contained in this response, the GoSL repudiates the conclusions and recommendations that have been erroneously arrived at in the High Commissioner's Report as they are based on incorrect and/or unsubstantiated and extraneous sources/material.

86. While the GoSL has categorically rejected resolution 22/1, it has nevertheless continued to make significant progress in its own reconciliation process, and Sri Lanka has continued to regularly update the Council on such progress. In this context, GoSL rejects, without prejudice to its position of non-recognition of resolution 22/1, the High Commissioner's claim that most of the recommendations made in her previous report to the Human Rights Council remain unimplemented.

87. With regard to the statement attributed to the Attorney General in paragraph 68, the Attorney General has categorically stated that this is a misrepresentation of his position by a false and misleading link being drawn between the lack of progress in cases such as the Trincomalee and ACF killings, and the absence of a Victim and Witness protection mechanism. On the contrary, he had informed the High Commissioner during the discussion, that the absence of such a law never posed an impediment to the judicial process, pointing out that whenever a complaint of intimidation of witnesses was brought to

the attention of authorities, steps were taken to ensure the securing of that testimony without any let or hindrance.

88. The trajectory that has emerged with regard to the recommendation of the High Commissioner to the HRC for the establishment of an international inquiry mechanism reflects the preconceived, politicized and prejudicial agenda which she has relentlessly pursued with regard to Sri Lanka. It may be recalled that just a week following the defeat of terrorism in Sri Lanka, on 26th May 2009, at the 11th Special Session of the UNHRC on Sri Lanka, the High Commissioner in the first instance, called for "an independent and credible international investigation" which was subsequently reiterated by her at the 11th regular session on 3rd June 2009, 14th session on 31st May 2010, and the 17th Session on 30th May 2011. In the Report of the OHCHR (A/HRC/22/38) dated 11th February 2013, she "reaffirms her long-standing call for an independent and credible international investigation..." The reference in the current report that "the High Commissioner remains convinced" for an "independent, international inquiry" demonstrates her persistent efforts against Sri Lanka. It is pertinent to question the factual basis for the High Commissioner's initial formal call to the HRC for an independent, international investigation and its continuation, in order that the international community not be misled.

89. The Government of Sri Lanka reiterates its categorical rejection of the Conclusions and Recommendations contained in the High Commissioner's Report, reflecting bias and is tantamount to an unwarranted interference in the internal affairs of a sovereign State.